

BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Reinstatement of:

JOHNATHON M. ROUX,

Petitioner.

SI-2011-14

OAH No. 2011030830

**DECISION**

This matter was heard before the Board of Accountancy (Board) on May 20, 2011, in Burlingame, California. The Board members present at the hearing were Sally Anderson, CPA, President; Marshal Oldman, Attorney at Law, Public Member, Vice President; Leslie LaManna, CPA, Secretary/Treasurer; Lenora Taylor, Attorney at Law, Public Member; Herschel Elkins, Attorney at Law, Public Member; K. T. Leung, CPA; Michelle Brough, Attorney at Law, Public Member; Louise Kirkbride, Public Member; Donald Driftmier, CPA; Diana Bell, Public Member; Larry Kaplan, Public Member; David Swartz, CPA; Michael Savoy, CPA; and Alicia Berhow, Public Member. Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, presided.

Carl W. Sonne, Deputy Attorney General, represented the Office of the Attorney General, California Department of Justice.

Petitioner Johnathon M. Roux was present and represented himself.

The matter was submitted and decided in executive session on May 20, 2011.

**FACTUAL FINDINGS**

1. On June 7, 1985, Johnathon Mark Roux (petitioner) was issued Accountant Certificate No. 43139 by the Board.

2. The Board revoked petitioner's certificate, effective June 17, 2007, as the result of a default decision. The facts and circumstances surrounding the revocation are that petitioner's certificate was in an expired status at the time he performed work as a CPA. Petitioner did business under an unregistered firm name.

Petitioner also failed to comply with continuing education requirements in that he engaged in the practice of public accountancy, but did not provide the requested documentation required to support the continuing education courses he claimed to have completed for his license renewal.

Pursuant to the facts set forth above, petitioner violated Business and Professions Code sections 5050, 5060, 5100, subdivisions (b), and (g), 498, and California Code of Regulations, title 16, sections 87, 88, and 89.

3. Petitioner has not previously petitioned for reinstatement. The Board ordered petitioner to pay \$3,000 in cost recovery.

4. The present petition was filed on March 2, 2011. Petitioner wishes to practice as a CPA again. He states that he plans to perform "Accounting and tax services – non audit Sacramento, CA and surrounding areas" if his license is restored.

5. Petitioner testified that his failure as a CPA was, in part, the result of family problems. Petitioner has accepted personal responsibility for his actions that led to his license revocation.

6. Petitioner submitted two letters of recommendation from accountancy professionals who find petitioner responsible and ethical, and two general character letters. Petitioner is active in youth sports in his community and has the respect of those with which he interacts.

7. Petitioner presented certificates of completion for 61 hours of continuing professional education completed during the period of December 16, 2009 through January 23, 2010. They include eight hours in ethics, eight hours in taxation, 33 hours in accounting and auditing, and 12 hours in technical subjects. Petitioner presented certificates of completion for an additional eight hours in taxation and 10 hours in marketing at the hearing.

8. Petitioner presented sufficient evidence to establish rehabilitation. It would not be against the public interest to reinstate petitioner's CPA certificate at this time under terms and conditions of probation.

### LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, good cause was established pursuant to Government Code section 11522 to grant the petition for reinstatement of petitioner's revoked license under terms and conditions of probation.

## ORDER

The petition of Johnathon Mark Roux for reinstatement of his revoked Accountant Certificate No. 43139 is hereby granted. Petitioner is placed on probation for a period of five years upon the follow terms and conditions of probation.

1. **Obey All Laws**

Petitioner shall obey all federal, California, other states and local laws, including those rules relating to the practice of public accountancy in California.

2. **Cost Reimbursement**

Petitioner shall reimburse the Board \$3,000 for its investigation and prosecution costs. The payment shall be made in installments over the period of probation.

The final payment is due one year before probation is scheduled to terminate.

3. **Submit Written Reports**

Petitioner shall submit, within 10 days of completion of the quarter, written reports to the Board on a form obtained from the Board. Petitioner shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to Petitioner's compliance with all the terms and conditions of probation. Petitioner shall immediately execute all release of information forms as may be required by the Board or its representatives.

4. **Personal Appearances**

Petitioner shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner.

5. **Comply With Probation**

Petitioner shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the California Board of Accountancy in its monitoring and investigation of the Petitioner's compliance with probation terms and conditions.

6. **Practice Investigation**

Petitioner shall be subject to, and shall permit, a practice investigation of the Petitioner's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner.

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OF ACCOUNTANCY

7. **Comply With Citations**

Petitioner shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

8. **Tolling of Probation for Out-of-State Residence/Practice**

In the event Petitioner should leave California to reside or practice outside this state, Petitioner must notify the Board in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the Board costs, and make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the Board.

9. **Violation of Probation**

If Petitioner violates probation in any respect, the Board, after giving Petitioner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

10. **Completion of Probation**

Upon successful completion of probation, Petitioner's license will be fully restored.

11. **Continuing Education Courses**

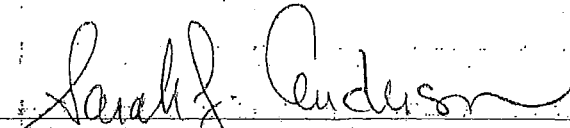
Petitioner shall complete and provide proper documentation of an additional 40 hours of professional education courses within the first six months of reinstatement. Twenty hours are to be in tax and 20 hours in accounting and auditing.

Failure to satisfactorily complete the required courses as scheduled or failure to complete same no later than 100 days prior to the termination of probation shall constitute a violation of probation.

12. **Active License Status**

Petitioner shall at all times maintain an active license status with the Board, including during any period of suspension. If the license is expired at the time the Board's decision becomes effective, the license must be renewed within 30 days of the effective date of the decision.

DATED: June 20, 2011

  
SALLY ANDERSON, CPA  
President, Board of Accountancy

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 KENT D. HARRIS, State Bar No. 144804  
Deputy Attorney General  
4 California Department of Justice  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 324-7859  
Facsimile: (916) 327-8643

7 Attorneys for Complainant  
8

9 **BEFORE THE**  
10 **CALIFORNIA BOARD OF ACCOUNTANCY**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2007-22

13 JOHNATHON MARK ROUX  
4934 Pathway Court  
14 Fair Oaks, CA 95628

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

15 Certified Public Accountant Certificate No.  
43139

16  
17 Respondent.

18 FINDINGS OF FACT

19 1. On or about January 9, 2007, Complainant Carol Sigmann, in her official  
20 capacity as the Executive Officer of the California Board of Accountancy, Department of  
21 Consumer Affairs, filed Accusation No. AC-2007-22 against Johnathon Mark Roux  
22 (Respondent) before the California Board of Accountancy.

23 2. On or about June 7, 1985, the California Board of Accountancy (Board)  
24 issued Accountant Certificate No. 43139 to Respondent. The Accountant Certificate was in full  
25 force and effect at all times relevant to the charges brought herein and will expire on January 31,  
26 2008, unless renewed.

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1                   3.     On or about January 16, 2007, Carol L Sekara, an employee of the  
2 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.  
3 AC-2007-22, Statement to Respondent, Notice of Defense, Request for Discovery, and  
4 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record  
5 with the Board, which was and is 4934 Pathway Court, Fair Oaks, CA 95628. A copy of the  
6 Accusation, the related documents, and Declaration of Service are attached as exhibit A, and are  
7 incorporated herein by reference. Further, on March 8, 2007, Mary Anne Snyder an employee of  
8 the Department of Justice, served by Certified and First Class Mail another copy of the  
9 Accusation No. AC-2007-22, Statement to Respondent, Notice of Defense, Request for  
10 Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to an additional  
11 address for Respondent, 6115 Main Avenue, #15, Orangevale, CA 95662. A copy of the  
12 Declaration of Service for said additional service is also attached as part of exhibit A, and is  
13 incorporated herein by reference.

14                   4.     Service of the Accusation was effective as a matter of law under the  
15 provisions of Government Code section 11505, subdivision (c).

16                   5.     On or about January 23, 2007, the signed Domestic Return Receipt from  
17 the January 16, 2007 service was received by the Department of Justice. Nothing has been  
18 returned from the second mailing of service. A copy of the returned Domestic Return Receipt is  
19 attached hereto as exhibit B, and are incorporated herein by reference.

20                   6.     Government Code section 11506 states, in pertinent part:

21                   "(c) The respondent shall be entitled to a hearing on the merits if the respondent  
22 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the  
23 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of  
24 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

25                   7.     Respondent failed to file a Notice of Defense within 15 days after service  
26 upon him of the Accusation, and therefore waived his right to a hearing on the merits of  
27 Accusation No. AC-2007-22.

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8. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in exhibits A, B and C, finds that the allegations in Accusation No. AC-2007-22 are true.

10. The total costs for investigation and enforcement are \$3,610.70 as of March 30, 2007.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Johnathon Mark Roux has subjected his Accountant Certificate No. 43139 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The California Board of Accountancy is authorized to revoke Respondent's Accountant Certificate based upon the violations alleged in Accusation No. AC-2007-22:

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1 ORDER

2 IT IS SO ORDERED that Accountant Certificate No. 43139, heretofore issued to  
3 Respondent Johnathon Mark Roux, is revoked.

4 Pursuant to Government Code section 11520, subdivision (c), Respondent may  
5 serve a written motion requesting that the Decision be vacated and stating the grounds relied on  
6 within seven (7) days after service of the Decision on Respondent. The agency in its discretion  
7 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the  
8 statute.

9 This Decision shall become effective on June 17, 2007.

10 It is so ORDERED May 18, 2007

11   
12 FOR THE CALIFORNIA BOARD OF ACCOUNTANCY  
13 DEPARTMENT OF CONSUMER AFFAIRS

14 Attachments:

15 Exhibit A: Accusation No.AC-2007-22, Related Documents, and Declaration of Service  
16 Exhibit B: Domestic Return Receipt  
17 Exhibit C: Certificate of Costs - Declaration of Carol Sigmann

18 DOJ docket number:03541110-SA2006103405  
19 Roux Default.wpd  
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Exhibit A

Accusation No. AC-2007-22,  
Related Documents and Declaration of Service

1 BILL LOCKYER, Attorney General  
of the State of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 KENT D. HARRIS, State Bar No. 144804  
Deputy Attorney General  
4 California Department of Justice  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 324-7859  
Facsimile: (916) 327-8643

7 Attorneys for Complainant  
8

9  
10 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2007-22

13 JOHNATHON MARK ROUX  
4934 Pathway Court  
14 Fair Oaks, CA 95628

**A C C U S A T I O N**

15 Certified Public Accountant Certificate No.  
43139

16  
17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Carol Sigmann (Complainant) brings this Accusation solely in her official  
21 capacity as the Executive Officer of the California Board of Accountancy, Department of  
22 Consumer Affairs.

23 2. On or about June 7, 1985, the California Board of Accountancy issued  
24 Certified Public Accountant Certificate Number 43139 to Johnathon Mark Roux (Respondent).  
25 The Certified Public Accountant Certificate will expire on January 31, 2008, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the California Board of Accountancy  
28 (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 5050 states:

3 "No person shall engage in the practice of public accountancy in this State unless  
4 such person is the holder of a valid permit to practice public accountancy issued by the board;  
5 provided, however, that nothing in this chapter shall prohibit a certified public accountant or a  
6 public accountant of another state, or any accountant of a foreign country lawfully practicing  
7 therein, from temporarily practicing in this State on professional business incident to his regular  
8 practice in another state or country."

9 5. Section 5060 states:

10 "(a) No person or firm may practice public accountancy under any name which is  
11 false or misleading.

12 "(b) No person or firm may practice public accountancy under any name other  
13 than the name under which the person or firm holds a valid permit to practice issued by the  
14 board.

15 "(c) Notwithstanding subdivision (b), a sole proprietor may practice under a name  
16 other than the name set forth on his or her permit to practice, provided the name is registered by  
17 the board, is in good standing, and complies with the requirements of subdivision (a).

18 "(d) The board may adopt regulations to implement, interpret, and make specific  
19 the provisions of this section including, but not limited to, regulations designating particular  
20 forms of names as being false or misleading."

21 6. Section 5100 states in pertinent part:

22 "After notice and hearing the board may revoke, suspend or refuse to renew any  
23 permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5  
24 (commencing with Section 5080), or may censure the holder of that permit or certificate for  
25 unprofessional conduct which includes, but is not limited to, one or any combination of the  
26 following causes:

27 "(b) A violation of Section 478, 498, or 499 dealing with false statements or  
28 omissions in the application for a license, or in obtaining a certificate as a certified public

1 accountant or in obtaining registration under this chapter or in obtaining a permit to practice  
2 public accountancy under this chapter.”...

3 “(g) Willful violation of this chapter or any rule or regulation promulgated by the  
4 board under the authority granted under this chapter.”

5 7. Section 118, subdivision (b), of the Code provides that the suspension,  
6 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to  
7 proceed with a disciplinary action during the period within which the license may be renewed,  
8 restored, reissued or reinstated.

9 8. Section 5107 of the Code provides, “(a) The executive officer of the board  
10 may request the administrative law judge, as part of the proposed decision in a disciplinary  
11 proceeding, to direct any holder of a permit or certificate found to have committed a violation or  
12 violations of this chapter to pay the board all reasonable costs of investigation and prosecution of  
13 the case, including, but not limited to, attorneys’ fees. The board shall not recover costs incurred  
14 at the administrative hearing.”

15 9. Title 16 California Code of Regulations Section 87 states in pertinent part:  
16 “As a condition of active status license renewal, a licensee shall complete at least 80 hours of  
17 qualified continuing education as described in section 88 in the two- year period immediately  
18 preceding license expiration and meet the reporting requirements set forth in subsection (a) of  
19 section 89.”

20 10. Title 16 California Code of Regulations Section 88(d) states in pertinent  
21 part that the credit as instructor will be allowed for any program or meeting providing that the  
22 session is one that would meet the continuing education requirements set forth in section 88(a),  
23 section 88.1, and section 88.2.”

24 11. Title 16 California Code of Regulations Section 89 provides in pertinent  
25 part: “(a) Upon renewal, a licensee who is required, pursuant to section 87, to obtain continuing  
26 education must provide a written statement, signed under penalty of perjury, certifying that the  
27 requisite number of continuing education hours has been obtained.”...

28 ///

1           “(d) If continuing education credit is claimed for completing a self-study course, the  
2 licensee shall obtain and retain for four years after renewal a certificate of completion of its  
3 equivalent disclosing the following information:

- 4       (1) Name of licensee taking the course  
5       (2) School, firm, or organization providing the course  
6       (3) Title of course or description of contents  
7       (4) Date of completion  
8       (5) Number of hours of continued education credit granted for completing the course”

9                               **FIRST CAUSE FOR DISCIPLINE**

10                              (Practice under an Expired License)

11               12.       Respondent is subject to disciplinary action under section 5050 in that  
12 between the dates of February 1, 2006 and August 26, 2006 he practiced as a Certified Public  
13 Accountant without a valid license.

14                              **SECOND CAUSE FOR DISCIPLINE**

15                              (Use of an Unregistered Firm Name)

16               13.       Respondent is subject to disciplinary action under section 5060 in that on  
17 or about April of 2006, he did business as Lindsey, Roux & Company, a name that is not  
18 registered with the Board.

19                              **THIRD CAUSE FOR DISCIPLINE**

20                              (Subsubmitting False Information to the Board)

21               14.       Respondent is subject to disciplinary action under sections 5100(b),  
22 5100(g), 498, and Title 16 California Code of Regulations Sections 87,88, and 89 in that  
23 he falsely certified to the Board the following:

24                              a. That he completed 70 hours of continuing education in December 2005  
25 and January 2006, when in fact he completed the hours in August 2006, after his renewal date;

26                              b. That he had completed three hours of teaching for “Staff Training–Tax  
27 Software” as completed on January 9, 2006 without providing any documentary support for said  
28 claim;

1 c. That he had completed 24 hours of "FASB, SSARS, & SAS" when he  
2 had actually completed only 8 hours;

3 d. That he had completed 8 hours of continuing education for a course  
4 entitled "How to Organize & Run a Small Business" when he had only completed 6 hours.

5 PRAYER

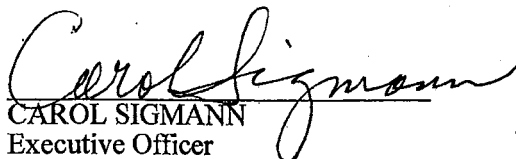
6 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
7 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

8 1. Revoking or suspending Accountant Certificate Number 43139, issued to  
9 Johnathon Mark Roux;

10 2. Ordering Johnathon Mark Roux to pay the California Board of  
11 Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to  
12 Business and Professions Code section 5107;

13 3. Taking such other and further action as deemed necessary and proper.  
14

15  
16 DATED: *January 9, 2007*

17  
18 

19 CAROL SIGMANN  
20 Executive Officer  
21 California Board of Accountancy  
22 Department of Consumer Affairs  
23 State of California  
24 Complainant

25 03541110-SA2006103405  
26 Roux accusation.wpd  
27 kdh:12/22/06  
28